

**PINS REF: APP/W0340/W/22/3312261**

**APPEAL BY**

**T A FISHER & SONS LIMITED**

**LAND TO THE REAR OF THE HOLLIES NURSING HOME**

**(LPA REF: 22/00244/FULEXT)**

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**OPENING STATEMENT ON BEHALF OF THE FIRST RULE 6 PARTY**

**AWE PLC/MINISTRY OF DEFENCE**

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**Introduction**

1. AWE Plc and the Ministry of Defence are joint rule 6 parties to this appeal and support West Berkshire District Council's ("WBDC") refusal of planning permission for the proposed development ("the Scheme"). The Office of Nuclear Regulation ("ONR") also objects to the Scheme and is the second rule 6 party. It is an indication of the seriousness of the issues to be considered that these three organisations are participating in this Appeal.

**AWE Burghfield**

2. AWE Burghfield ("AWE B"), together with AWE Aldermaston ("AWE A"), is responsible for the delivery of the whole life-cycle of nuclear warheads from concept design to disassembly. This is an essential element of the nation's continuous-at-sea-deterrent ("CASD"). AWE A and B are the only locations in the UK that can provide these capabilities.<sup>1</sup> They are subject to the operational demands of the Ministry of Defence and, beyond that, the nation's international obligations. CASD is essential as the ultimate guarantee of our nation's security.<sup>2</sup>
3. In addition to current operations, AWE is undergoing a programme of investment and change, including new-build facilities and refurbishment which seeks to consolidate, rationalise and modernise existing facilities. Now and in the future, AWE requires flexibility to be able to meet the needs of the Ministry of Defence.<sup>3</sup>

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<sup>1</sup> Person MD 4.2.

<sup>2</sup> Person MD 3.2.

<sup>3</sup> Person MD 5.1.

4. AWE's sites operate within a detailed regulatory regime and are held to stringent safety requirements for the protection of the public, following the principles of "defence in depth". One aspect of these safety requirements are the Radiation (Emergency Preparedness and Public Information) Regulations 2019 ("**REPPIR 2019**") and in particular the requirement on the local authority, WBDC, to designate a detailed emergency planning zone ("**DEPZ**") and have in place an offsite emergency plan to mitigate the offsite effects of an emergency<sup>4</sup>, having regard to the need, so far as possible, to avoid the occurrence of serious physical injury.<sup>5</sup> The emergency plan ("**OSEP**") is one of the areas of focus of this Inquiry, and the parties have put forward detailed evidence on the plan and issues related to it. However, putting that detail aside for a moment, it is important to step back and remember that the purpose of the plan is to protect public safety and mitigate harm in the event of a radiation emergency. The plan is not concerned with the likelihood of whether an emergency will happen, but what to do to protect the public in the event the emergency does happen. The fact that AWE B is a site that requires such a plan is not in dispute. It is one of many layers of safety around AWE's operations and although it is common ground that there is a very low likelihood of a radiation emergency, an adequate emergency plan is important and required by law in order for AWE to operate with ionising radiation.<sup>6</sup>
  
5. AWE and the Ministry of Defence do not appear at this Inquiry lightly. They are here to assist the Inspector in understanding the particular issues in this appeal that engage AWE's operations and the nation's security. In addition, they have become increasingly concerned about the potential for additional risks to (1) public safety and (2) AWE's operations arising from further development within the DEPZ, in particular residential development. These concerns relate to the Scheme itself in this case. However, and just as importantly, the Applicant is seeking to justify the Scheme on the basis of assumed low or "minimal" risks to the individuals who will live at the appeal site. This approach was followed in the recent appeal decision at Kingfisher Grove<sup>7</sup> but it forms no part of REPPIR 2019. AWE and the Ministry of Defence have therefore decided to participate in this Appeal to ensure that the reasons why they consider further residential development within the DEPZ should be

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<sup>4</sup> See CD12.3, Regulation 11.

<sup>5</sup> See CD12.3, Regulation 1.

<sup>6</sup> See CD12.3, Regulation 10(4)(b).

<sup>7</sup> CD8.3.

avoided are fully explored and taken into account. Their participation arises out of legitimate concerns for public safety and national security, for all of the reasons that will be explored at this Inquiry.

### **REPPIR 2019**

6. AWE's duty under REPPIR 2019 is to identify and assess all hazards which have the potential to result in a radiation emergency where an annual effective dose could exceed 1mSv off-site (the Hazard, Evaluation and Consequence Assessment ("HECA")). This analysis includes identifying hazards that have a low likelihood of occurrence, but catastrophic consequences. The assessment is required to be carried out on a conservative and consistent basis.<sup>8</sup> The output of the HECA is the determination of the distance for urgent protective action ("UPA") which is provided to WBDC via the Consequences Report<sup>9</sup>. WBDC then sets the DEPZ and produces an off-site emergency plan.
  
7. The HECA is the product of careful and thorough evaluation and assessment by suitably qualified and experienced persons in their field within AWE<sup>10</sup> following established processes set out in approved guidance from ONR and Public Health England (now UKHSA)<sup>11</sup>. The HECA was subject to independent peer review within AWE and then scrutinised by external regulators: principally ONR. Public Health England also considered the Consequences Report and endorsed the recommendation of a minimum UPA distance of 3.16km.<sup>12</sup> The process for designating the DEPZ was found to be lawful by the High Court in *Crest Nicholson Operations Ltd v West Berkshire DC* [2021] EWHC 298 (Admin).<sup>13</sup>
  
8. REPPIR 2019 does not require, or endorse, any kind of individual risk assessment for specific developments or areas within the DEPZ. It provides a prescribed process for identifying and assessing hazards and consequences, and the ultimate determination of the distance for UPA for the protection of the public. You will hear that any kind of individual risk assessment for a specific development is irrelevant to the question of the extent of the

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<sup>8</sup> Person AW 5.5.

<sup>9</sup> CD5.31.

<sup>10</sup> Person AW 5.8.

<sup>11</sup> CD12.6, 13.27 and 13.28.

<sup>12</sup> Person AW 6.2.

<sup>13</sup> CD13.3.

DEPZ, or to the formulation and operation of the OSEP. In any event, to the extent the Appellant is asking this Inquiry to take comfort from its witness' individual risk assessment for the Scheme, you will hear that this risk assessment does not account for the realities of a radiation emergency, should one occur, and does not consider the recovery phase at all, which will inevitably be long, costly and disruptive.

### **Planning Policy Context**

9. The Development Plan contains a framework for decision-making when development is proposed within the DEPZ. Policy CS8 provides that development within the “inner land use planning consultation zone” (a feature of REPPiR 2001) is likely to be refused permission when the ONR has advised against that development. In other zones, development proposals will be considered in consultation with the ONR having regard to scale, location, population distribution and the impact on public safety and the emergency offsite plan. You will hear from AWE's planning witness that policy CS8 was intended to avoid the case-by-case examination of risk that the Appellant seeks to advance in this Inquiry.<sup>14</sup>
  
10. As the Inspector will be aware from the written material prepared for this Inquiry, the Appeal Site was not in the inner consultation zone when it was allocated for housing. The DEPZ replaced the inner consultation zone when REPPiR 2019 came into force. The DEPZ is larger than the inner consultation zone and it is important to remember that this is because REPPiR 2019 takes a more precautionary approach than REPPiR 2001. The changes to the regulations arose from lessons learnt after the meltdown of three reactors at the Fukushima Daiichi nuclear power plant in Japan in March 2011 and other changes to international nuclear regulation.
  
11. AWE's position is that the expansion of the DEPZ does not justify applying reduced weight to CS8, as the Appellant seeks to argue. There is no principled reason or sense in applying a more permissive approach to planning decision-making because of changes that were specifically intended to enhance the protection afforded to the public.

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<sup>14</sup> Bashforth 4.4-4.10.

12. The DEPZ replaces the inner consultation zone. Accordingly, the decision-making steps are clear: ONR has advised against the grant of permission for the Scheme and therefore the starting point is refusal. CS8 applies even where a site is allocated for housing (which this site is, see HSA16). The allocation does not disapply the rest of the development plan, which must be read as a whole. You will hear that in light of the expanded DEPZ, operation of other policies in the Development Plan and ONR's advice that the allocation should be given limited weight. However, as explained in AWE's planning evidence, applying policy CS8 would still lead to refusal even if the changes brought about by REPPIR 2019 had not taken place. Although outside the original inner zone, the Scheme would need to be considered in light of the ONR's objection and the impacts on public safety and the OSEP that you will hear about in this Inquiry.
13. You will also hear that emerging policy supports refusal in this case – WBDC's draft policy SP4 includes a presumption against residential development within the DEPZ, especially where the ONR or Ministry of Defence has advised against that development.
14. National planning policy is also clear that as an operational defence site, AWE B should not suffer adverse effects from new development (see paragraph 97(b) NPPF) and as an existing user it should not have unreasonable restrictions placed upon it as a result of new development (see paragraph 187 NPPF). The Inquiry will hear evidence from AWE and Ministry of Defence witnesses on these points.

### **The Main Issues**

15. It is against this background – and the clear policy support for refusal - that the Main Issues in this Appeal need to be considered.
16. The Main Issues identified by the Inspector, insofar as relevant to AWE/Ministry of Defence are:
- (1) The effect of the proposal on the safety and wellbeing of future residents of the proposed development, and the wider public, with regard to the proximity of the Atomic Weapons Establishment (AWE) site at Burghfield; and

- (2) The effect of the proposal on the future capability and capacity of AWE Burghfield to operate effectively;

17. AWE will call evidence from two technical experts: person AW who has extensive experience of the operations and the safety case for AWE B's nuclear operations and person MD, a member of the senior leadership team of the Warhead Group of the Defence Nuclear Organisation (part of the Ministry of Defence). These witnesses describe (1) the critical importance of AWE's operations to national security and CASD; (2) the impact on public safety arising from residential development in the DEPZ; and (3) the impact on AWE's operations arising from residential development in the DEPZ. AWE/Ministry of Defence also rely on evidence from Sean Bashforth, expert planning witness, who will participate in round table discussions on planning policy and weight.

#### Issue 1: Public Safety

18. AWE advances a simple case on public safety in this Appeal. A radiation emergency is a serious event with the potential to expose the public to ionising radiation that they would not otherwise experience and have not consented to. They are in their nature unpredictable (unlike the simple scenario presented by the Appellant<sup>15</sup>), hence the need for detailed emergency planning. Adding more people to the DEPZ means that if there is a radiation emergency, more people are at risk of exposure.

19. You will also hear about societal risk – i.e. the greater the number of people involved in an emergency, the greater the societal risk.<sup>16</sup> The focus of the OSEP is on the first two days after the emergency, but there is a much longer period of recovery that needs to be considered. You will hear evidence that further development within the DEPZ adds further individuals who may suffer the psychological effects of a radiation emergency, more buildings to decontaminate (a costly and complicated process) and extended disruption to normal living and burdens on public authorities. The costs of recovery fall on the public purse.<sup>17</sup>

#### Issue 2: Impact on AWE Operations

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<sup>15</sup> Person AW Rebuttal 3.3

<sup>16</sup> Person AW 10.14

<sup>17</sup> Person AW 10.17

20. As already explained, AWE B is the only site in the UK that can provide the capabilities for the assembly and disassembly of nuclear warheads. It is unique. It is critical to delivery of CASD and requires flexibility to develop, expand and/or change in response to Ministry of Defence requirements.
21. You will hear evidence that increasing the population within the DEPZ has the potential to affect CASD. If increases in population density put the adequacy of the OSEP into question, AWE's regulators may impose additional requirements or restrictions on AWE's operations. At the far end of that scale – if WBDC cannot demonstrate to the ONR that it has an adequate offsite emergency plan, AWE would be unable to work with ionising radiation.<sup>18</sup> However, even before this point, AWE as a responsible operator may self-limit operations, affecting its ability to support CASD.<sup>19</sup>

### **Conclusion**

22. Cumulative increases in population within the DEPZ bring with them an increase in the societal risks should a radiation emergency occur and have the potential to affect the adequacy of the OSEP and, in turn, AWE's operations. In the context of AWE's unique and critical national security role, these matters are important and weigh heavily against this Scheme. It is submitted that there is no reason to depart from established principles and policy in this Appeal. The site-specific risk assessment you will be asked to consider has no basis in the relevant legislation and is irrelevant to the extent of the DEPZ or the operation of the OSEP. It is submitted that a precautionary approach tells us that granting permission here is a step that is not worth taking, particularly in circumstances where there is clear policy support to do so.
23. For the reasons set out in AWE and the Ministry of Defence's evidence, and which will be explored in more detail in the Inquiry, AWE/Ministry of Defence respectfully submit that you should dismiss this Appeal.

**Rose Grogan**  
**39 Essex Chambers**  
**6 June 2023**

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<sup>18</sup> REPPPIR regulation 10(4)(b), CD12.3.

<sup>19</sup> Person AW Rebuttal 4.2.